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M. STEPHEN JONES
County Recorder

RECORDING REQUESTED BY:

Donald Trowbridge
Atwater Retirement Village II, LLC
Western Care Construction Company
4020 Sierra College Boulevard, Suite 200
Rocklin, California 95677

P Public

P

Doc#: 2007 - 006706



Titles:	1	Pages:	16
Fees	52.00		
Taxes	0.00		
Other	0.00		
PAID	\$52.00		

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Northern California Region
8800 Cal Center Drive
Sacramento, California 95826
ATTN: Anthony J. Landis, P.E.
Chief, Office of Military Facilities

(Space Above This Line For Recorder's Use Only)

**COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION**

Re: Castle Vista, Parcel J2b2
GROUNDWATER

This Covenant and Agreement (hereinafter Covenant) is made by and between the Atwater Retirement Village II, LLC (hereinafter Covenantor), and the State of California (the State), acting by and through the Department of Toxic Substances Control (Department), and the Central Valley Regional Water Quality Control Board (Regional Water Board).

The State has determined that this Covenant is reasonably necessary to protect present or future human health and safety and/or the environment from potential risk related to the hazardous materials in the groundwater, as defined in California Health & Safety Code (H&SC) Section 25260, and enters into this Covenant in accordance with H&SC Section 25355.5 and California Civil Code Section 1471(c), and to protect waters of the State in accordance with California Water Code Division 7.

The Air Force Real Property Agency (Air Force) intends to transfer the herein described real property (Property) to the Covenantor pursuant to the *Finding of Suitability to Transfer for Parcel J2b2 (Castle Gardens)*, dated December 2004. As a part of the transfer to Atwater Retirement Village II, LLC, the Air Force will impose deed restrictions on the Property, which will be similar to the restrictions contained in this Covenant.

The Covenantor and the State, collectively referred to as the Parties, therefore intent that the use of the Property will be restricted as set forth in this Covenant.

NORTH AMERICAN TITLE COMPANY

ARTICLE I

STATEMENT OF FACTS

1.01 Property Description. The Property is identified as Parcel J2b2 of the former Castle Air Force Base, California, totaling approximately eight acres and is more particularly described in Exhibit A and depicted in Exhibit B. This property is zone Special Planning Zone pursuant to the Merced County general plan.

1.02 Existing Groundwater Contamination. Groundwater contamination originating from numerous sources across the former base is located on the Property. Monitoring data indicate the underlying groundwater is primarily contaminated by volatile organic compounds, trichloroethene, perchloroethylene, 1-2-dichloroethene at a depth of approximately 70 feet and more below ground surface. The regional direction of flow is approximately southwest.

1.03 Groundwater Remedial Action Underway. The Air Force is conducting a remedial action to remove contaminated groundwater at the Property in coordination with the United States Environmental Protection Agency (U.S. EPA), the Department, and the Regional Water Board. Groundwater is being remediated as part of the Comprehensive Basewide Record of Decision, part 2 (CB ROD, part 2, June 2006). Groundwater remediation is being achieved through a groundwater extraction and treatment program underway as part of the CB ROD, part 2. Complete delineation and full capture of all contaminated groundwater has been achieved as part of the CB ROD, part 2. The U.S. EPA, the Department, and the Regional Water Board concurred on the "*Demonstration of Remedial Action Operating Properly and Successfully*," dated November 2003. The Air Force is responsible for meeting the requirements for the groundwater remedy in accordance with the CB ROD, part 2.

1.04 Suitability to Transfer. The Air Force has issued a Finding of Suitability to Transfer (FOST) dated December 2004, as required to permit transfer of the Property. The FOST indicates the intended reuse of the Parcel is residential and it is suitable for transfer. The agencies concur on the conclusions in the FOST and agreed the parcels described in exhibits A and B is suitable for transfer.

ARTICLE II

DEFINITIONS

2.01 Department. "Department" means the Department of Toxic Substances Control and includes any successor agencies, if any.

2.02 Regional Water Board. "Regional Water Board" means the Regional Water Quality Control Board, Central Valley Region, and includes any successor agencies, if any.

2.03 Covenantor. "Covenantor" means Atwater Retirement Village II, LLC.

2.04 Owner. "Owner" means the Covenantor and all successors in interest to the Covenantor, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.05 Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal right to occupy any portion of the Property.

ARTICLE III

GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC Section 25355.5(a)(1)(c), Civil Code Section 1471, and California Code of Regulations (CCR), Title 22, Section 67391.1; (b) inures to the benefit of the State and passes with each and every portion of Property; (c) is for the benefit of and is enforceable by the State; and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02 Binding upon Owners and Occupants. Pursuant to H&SC Section 25355.5(a) (1)(c), this Covenant binds all Owners and Occupants of the Property, their heirs, successors, and assignees, and their agents, employees, and lessees. Pursuant to Civil Code Section 1471(b), the Owner and all successive owners of the Property are expressly bound hereby for the benefit of the State.

3.03 Written Notice of Release of Hazardous Materials. Prior to the sale, lease or sublease of the Property, of any portion thereof, or the execution of a license or easement on the Property, the owner, lessor, or sub-lessor shall give the buyer, lessee, or sub-lessee notice that hazardous materials are located beneath the Property as required by H&SC Section 25359.7.

3.04 Accompaniment to Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases and subleases for any portion of the Property.

3.05 Conveyance of Property. The Owner shall notify the Department and Regional Water Board no later than thirty (30) days after conveying any ownership interest in the Property (excluding short-term rentals and leases, mortgages, liens and other non-possessory encumbrances). The Department and Regional Water Board shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect any proposed conveyance, except as provided by law.

3.06 Monitoring and Implementation. Pursuant to the CB ROD, part 2, the Air Force will monitor and report on the status of the groundwater plume(s). The monitoring and reporting requirements include the following:

- (a) The disposition of well permit applications submitted to Merced County for proposed well locations on the Property;
- (b) Any prohibited activities, as described in Section 4.01 of this Covenant, observed by or reported to the Air Force, Covenantor or owner during the course of the review.

If the Air Force does not fulfill these requirements, the Owner must provide an annual report on requirements 3.06 (a) and (b) above.

3.07 Costs of Administering this Covenant. The Department and the Regional Water Board have incurred and will in the future incur costs associated with the administration of this Covenant. Pursuant to California Code of Regulations, Title 22, Section 67391.1(h) and Water Code section 13304, the Department's and the Regional Water Board's costs associated with the administration of this Covenant must be paid.

ARTICLE IV

RESTRICTIONS

4.01 Prohibited Activities. The following activities are prohibited on the Castle Groundwater Well Drilling Prohibition Zones as depicted in Exhibit B:

- (a) Construction of groundwater wells for injection or extraction on the Property,
- (b) Any land use that would restrict remedial investigation activities, remedial actions, or long-term maintenance and operation of the groundwater remedy,

- (c) Destruction or disturbance of the existing or future groundwater monitoring wells or other parts of the groundwater extraction and treatment systems, and
- (d) Any other activity on the Property that would interfere with or adversely affect the groundwater remedy, or result in the creation of a groundwater recharge area (e.g. unlined surface impoundments or disposal trenches). Normal landscaping and irrigation activities within the Property including routine irrigation practices are not prohibited activities.

4.02 Notification of Discovery of Activities Affecting the Groundwater Remedial Action or Associated Monitoring Systems. The Owner or Occupant shall notify the Department, the Regional Water Board and U.S. EPA of the discovery of any activities interfering with or adversely affecting the groundwater remedy and associated monitoring systems. The Owner or Occupant shall provide the notification in accordance with Section 7.04 within seven (7) working days after the discovery of the activity and shall include information regarding the type of activity, date of the activity, and location of the activity on the Property.

4.03 Access. The U.S. EPA, the Department, and the Regional Water Board, their contractors and agents shall have reasonable right-of-entry and access to the Property for inspection, monitoring, testing, sampling, installation and monitoring of remedial systems, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department, the Regional Water Board and the U.S. EPA in order to protect the public health and safety and/or the environment and oversee any required activities.

ARTICLE V

ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department, or the Regional Water Board to require that the Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas, water wells, and surface impoundments constructed or placed upon any portion of the Property in violation of the Restrictions). The Department or the Regional Water Board may enforce violations of the Covenant in accordance with applicable law.

ARTICLE VI

VARIANCE, TERMINATION AND TERM

6.01 Variance. Covenantor, Owner, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233. The Department shall receive the concurrence of the Regional Water Board before any such variance is effective.

6.02 Termination. Covenantor, Owner, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC Section 25234. The Department shall receive the concurrence of the Regional Water Board before any such termination is effective.

6.03 Term. Unless ended in accordance with the termination paragraph above, by law, or by the Department and the Regional Water Board in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02 State of California References. All references to the State of California, the Department, and the Regional Water Board include successor agencies/departments or other successor entity(ies) and delegated agencies.

7.03 Recordation. The Covenantor shall ensure that this Covenant, with all referenced Exhibits, will be recorded in the County of Merced immediately following the recording of a deed transferring the Property from the Air Force to another owner.

7.04 Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective:

1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or 2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Property Owner:	Atwater Retirement Village II, LLC Western Care Construction Company 4020 Sierra College Boulevard, Suite 200 Rocklin, California 95677
To Department:	Anthony J. Landis, P.E. Chief, Northern California Operations Office of Military Facilities Department of Toxic Substances Control 8800 Cal Center Drive Sacramento, California 95826
To Regional Water Board:	Pamela C. Creedon Executive Officer Regional Water Quality Control Board Central Valley Region 11020 Sun Center Drive #200 Rancho Cordova, California 95670-6114
To U.S. EPA:	Kathleen Johnson Chief, Federal Facilities Cleanup Branch Superfund Division U.S. Environmental Protection Agency Region IX 75 Hawthorne Street San Francisco, California 94105-3901

Any party may change its address or the agency function to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05 Partial Invalidity. If any provision of this Covenant is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Attachments. All attachments referenced in this Covenant are deemed incorporated into this Covenant by reference.

7.07 Section Headings. The section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.

7.08 Statutory References. All statutory references include successor provisions.

7.09 Representative Authority. The undersigned representative of each party to this Covenant certifies that he or she is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind that party to this Covenant.

{Signatures follow}

IN WITNESS WHEREOF, DONALD T. TROWBRIDGE has caused these presents to be executed on this 22 day of January, 2006.

ATWATER RETIREMENT VILLAGE II, LLC,
a California limited liability company

BY: [Signature]
Donald T. Trowbridge, Member
Authorized Signature

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF Placer)

On 1/22/07, 2005, before me, Caren Elaine Lollis, a Notary Public, personally appeared Donald T. Trowbridge, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

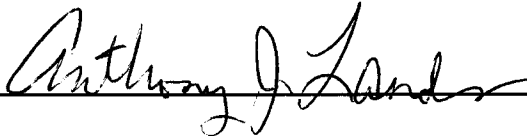
WITNESS my hand and official seal.



Signature Caren Elaine Lollis
(signature of Notary)

IN WITNESS WHEREOF, the DEPARTMENT OF TOXIC SUBSTANCES CONTROL,
STATE OF CALIFORNIA has caused these presents to be executed on this 12th day
of December, 2006.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL




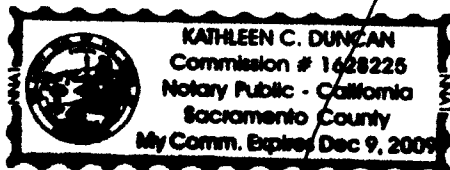
ANTHONY J. LANDIS
Chief
Northern California Operations
Office of Military Facilities

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) SS
County of Sacramento

On December 12, 2006 before me, Kathleen C. Duncan, a Notary Public,
personally appeared, known to me to be the person whose name is subscribed to the
within instrument, and acknowledged to me that he/she executed the same in his/her
authorized capacity, and that by his/her signature on the instrument, the entity on behalf
of which he/she acted executed the instrument.


Notary Public



STATE OF CALIFORNIA

COUNTY OF Sacramento

SS.

Notary Public

On December 12, 2006, before me, Kathleen C. Duncan,

personally appeared Anthony J. Landis

☒ personally known to me – OR – () proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Kathleen C. Duncan

(This area for official notarial seal)

DESCRIPTION OF ATTACHED DOCUMENT
Covenant to Restrict Use of Property
Environmental Restriction

DESCRIPTION OF DOCUMENT (OPTIONAL)

STATE OF CALIFORNIA

COUNTY OF _____

On _____, before me, _____,

personally appeared _____

() personally known to me – OR – () proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

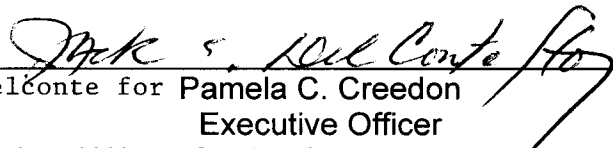
(This area for official notarial seal)

DESCRIPTION OF ATTACHED DOCUMENT

DESCRIPTION OF DOCUMENT (OPTIONAL)

IN WITNESS WHEREOF, the CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD, STATE OF CALIFORNIA has caused these presents to be executed on this 13th day of December, 2006.

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD



Jack E. Delconte for Pamela C. Creedon
Executive Officer
California Regional Water Quality Control Board, Central Valley Region

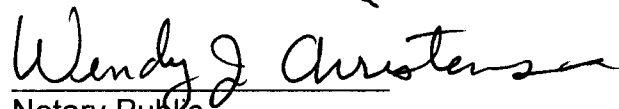
ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) SS
County of Sacramento

On December 13, 2006 before me, Wendy J. Christensen a Notary Public, personally appeared ~~known~~ to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity on behalf of which he/she acted executed the instrument.

*





Notary Public

STATE OF CALIFORNIA

COUNTY OF Sacramento

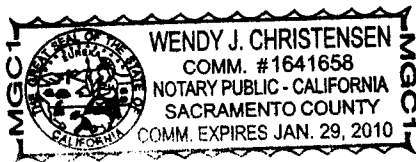
)SS.

On December 13, 2006, before me, Wendy J. Christensen

personally appeared Jack E. Delconte

Notary Public

☒ personally known to me – OR – () proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



(This area for official notarial seal)

WITNESS my hand and official seal.

Wendy J. Christensen

DESCRIPTION OF ATTACHED DOCUMENT

Covenant to Restrict Use of Property
Environmental Restriction

DESCRIPTION OF DOCUMENT (OPTIONAL)

STATE OF CALIFORNIA

COUNTY OF _____

On _____, before me, _____

personally appeared _____

() personally known to me – OR – () proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(This area for official notarial seal)

DESCRIPTION OF ATTACHED DOCUMENT

DESCRIPTION OF DOCUMENT (OPTIONAL)

EXHIBIT A
TO
QUITCLAIM DEED
PARCEL J2b2
CASTLE VISTA PHASE II

That portion of "Tract 512, 80.889 Acres" as shown on the Record of Survey for the U.S. Army Corps of Engineers—City of Atwater, Volume 11, Record of Surveys, Page 48, Merced County Records, within Section 6, Township 7 South, Range 13 East, M.D.B.&M., said portion being described as follows:

Commencing at the southwest corner of said Tract 512, also being the northwest corner of the City of Atwater Well Site as shown on the above referenced survey; thence along the westerly line of Tract 512, N.03°59'33"W. 1214.94 feet; thence N.88°59'00"W. 4.03 feet and N.06°28'20"W. 218.70 feet to the TRUE POINT OF BEGINNING; thence continuing along the westerly line of Tract 512, N.06°28'20"W. 849.29 feet to the southwest corner of Parcel 1 as described in the "Quitclaim Deed", recorded as Document No. 2002-049703, Merced County Records; thence along the south line of said Parcel 1, N.89°53'40"E. 432.67 feet to the southeast corner thereof and the westerly line of Parcel 2 as described in the above referenced "Quitclaim Deed"; thence along the westerly line of Parcel 2, S.06°28'20"E. 150.00 feet to the most southerly corner of said Parcel 2, said point being on the westerly line of the property described in the "Quitclaim Deed" recorded in Volume 3758, Official Records, Page 453, Merced County Records; thence along said westerly boundary, S.06°28'20"E. 644.00 feet to a corner as described is said "Quitclaim Deed"; thence along the northerly line as described therein, S.85°01'40"W. 130.00 feet; thence along a non-tangent 70.00 foot radius curve concave to the south, whose radius point bears S.69°42'12"W., westerly through a central angle of 164°43'42", an arc distance of 201.26 feet, the chord being S.77°20'20"W. (S.77°21'56"W. record) 138.75 feet; thence S.85°01'40"W. 162.15 feet to the point of beginning.

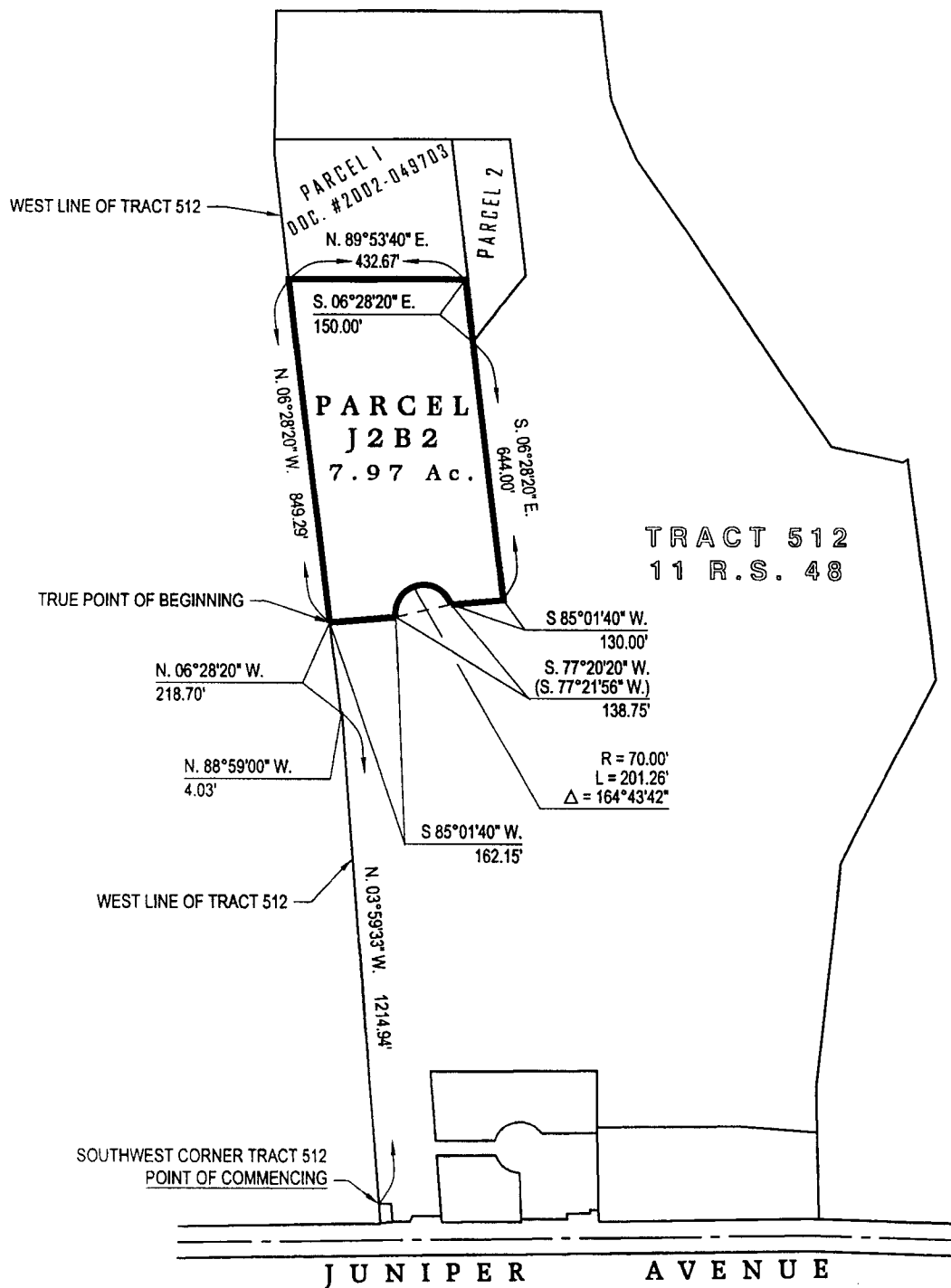
Contains: 7.97 acres, more or less.

September 13, 2006

06045

EXHIBIT B

PARCEL J2B2



BCA BEDESEN-CARDOZA & ASSOCIATES, Inc.
2837 "G" Street, P.O. Box 391
Merced, CA 95340 (209) 722-8042
Engineering • Land Surveying

0 100 200 300 400 800

SCALE: 1" = 400'

DESCRIPTION:

The land referred to herein is situated in the State of California, County of Merced, City of Atwater, and is described as follows:

THAT PORTION OF "TRACT 512, 80.889 ACRES" AS SHOWN ON THE RECORD OF SURVEY FOR THE U.S. ARMY CORPS OF ENGINEERS - CITY OF ATWATER, VOLUME 11, RECORD OF SURVEYS, PAGE 48, MERCED COUNTY RECORDS, WITHIN SECTION 6, TOWNSHIP 7 SOUTH, RANGE 13 EAST, MOUNT DIABLO BASE AND MERIDIAN, SAID PORTION BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT 512, ALSO BEING THE NORTHWEST CORNER OF THE CITY OF ATWATER WELL SITE AS SHOWN ON THE ABOVE REFERENCED SURVEY; THENCE ALONG THE WESTERLY LINE OF TRACT 512, N.03°59'33"W. 1214.94 FEET; THENCE N.88°59'00"W. 4.03 FEET AND N.06°28'20"W. 218.70 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG THE WESTERLY LINE OF TRACT 512, N.06°28'20"W. 849.29 FEET TO THE SOUTHWEST CORNER OF PARCEL 1 AS DESCRIBED IN THE "QUITCLAIM DEED", RECORDED AS DOCUMENT NO. 2002-049703, MERCED COUNTY RECORDS; THENCE ALONG THE SOUTH LINE OF SAID PARCEL 1, N.89°53'40"E. 432.67 FEET TO THE SOUTHEAST CORNER THEREOF AND THE WESTERLY LINE OF PARCEL 2 AS DESCRIBED IN THE ABOVE REFERENCED "QUITCLAIM DEED"; THENCE ALONG THE WESTERLY LINE OF PARCEL 2, S.06°28'20"E. 150.00 FEET TO THE MOST SOUTHERLY CORNER OF SAID PARCEL 2, SAID POINT BEING ON THE WESTERLY LINE OF THE PROPERTY DESCRIBED IN THE "QUITCLAIM DEED" RECORDED IN VOLUME 3758, OFFICIAL RECORDS, PAGE 453, MERCED COUNTY RECORDS; THENCE ALONG SAID WESTERLY BOUNDARY, S.06°28'20"E. 644.00 FEET TO A CORNER AS DESCRIBED IN SAID "QUITCLAIM DEED"; THENCE ALONG THE NORTHERLY LINE AS DESCRIBED THEREIN, S.85°01'40"W. 130.00 FEET; THENCE ALONG A NON-TANGENT 70.00 FOOT RADIUS CURVE CONCAVE TO THE SOUTH, WHOSE RADIUS POINT BEARS S.69°42'12"W., WESTERLY THROUGH A CENTRAL ANGLE OF 164°43'42", AN ARC DISTANCE OF 201.26 FEET, THE CHORD BEING S.77°20'20"W. (S.77°21'56"W. RECORD) 138.75 FEET; THENCE S.85°01'40"W. 162.15 FEET TO THE POINT OF BEGINNING.

APN: 004-310-011